

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

Karen A. Overstreet
Bankruptcy Judge

CHAMBERS
United States Courthouse
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May 11, 2005

Via ECF

Mr. Arnold M. Willig
Ms. Elizabeth H. Shea
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Mr. Bruce J. Borrus
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Re: *Anthony and Barbara Sarp, et al*, Case No. 03-24716 (administratively and substantively consolidated)

Dear Counsel:

On February 11, 2005, I heard oral argument on Northrim Bank's Motion for Relief from Stay re: all inventory, chattel paper, accounts, equipment, general intangibles & fixtures, 43 boats & motors, 9 spare motors, 10 powerheads. After you provided me with supplemental briefing on section 9-515, adopted in Washington as RCW 62A.9A-515 (effective June 30, 2001), I issued my letter ruling of April 25, 2005 (the "Letter Ruling"). In the Letter Ruling, I concluded that the status of Northrim Bank ("Northrim") as a secured creditor was established as of the petition date for Katmai Lodge, herein December 5, 2003, and that Northrim's failure to file a timely continuation statement post-petition did not negate that status. In rendering that opinion, I assumed for purposes of the motion that Northrim had a valid assignment of the security interest of City Bank, which would permit Northrim to rely on a financing statement filed by City Bank on December 30, 1994. City Bank filed a UCC-3 continuation statement as to that financing statement on November 29, 1999.

David S. Mork, the chapter 11 trustee in these cases (the "Trustee"), moved for reconsideration of my Letter Ruling. Although no order has been entered on my Letter Ruling, I will treat the Trustee's motion as a motion for reconsideration. The Trustee's motion is supported

by the Declarations of Steve Kirschner and Pam Leon, and a Supplemental Declaration of Steve Kirschner.

Motions for reconsideration are disfavored in this district. The local district rules direct that a court should

ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

Local District Rule 7(h)(1). For the following reasons, I will reconsider my Letter Ruling and I conclude that Northrim may not rely on the December 30, 1994 financing statement of City Bank because I conclude that it did not have a valid assignment of City Bank's security interest perfected by that financing statement.

Factual Background

On December 30, 1994, Citibank filed a UCC-1 Financing Statement perfecting its security interest in, among other things, equipment, boats, motors and proceeds thereof. On February 23, 1998, City Bank filed a UCC-3 change statement indicating a name change by the debtor. On November 29, 1999, Citibank filed a UCC-3 Continuation Statement, continuing its perfection of the original 1994 filing referenced above.

In my Letter Ruling, I erroneously found that "[o]n June 23, 2003, Citibank filed a UCC-3 Amendment, reflecting the assignment of its interest under the November 29, 1999 statement to Northrim Bank." The declarations of Steve Kirschner and Pam Leon prove that this UCC-3 was not filed by City Bank. In fact, the copy of that document in evidence is not signed by anyone. The document indicates that after recording, it is to be returned to Northrim. There is no evidence, however, that Northrim filed that document.

Steve Kirschner was the loan officer at City Bank in charge of the Sarp/Katmai loan at the time Northrim entered into its own lending arrangement with Mr. Sarp and Katmai Lodge, Inc. According to Mr. Kirschner's declarations, he was contacted by Ed LeFlur, a representative of Northrim, in 2001. Mr. Kirschner indicated a willingness to assign City Bank's security interest in Katmai's Alaska personal property assets to Northrim in an email dated September 18, 2001. *See* Ex. 1 to Supplemental Declaration of Steve Kirschner. Mr. Kirschner further states, however, that such an assignment never occurred and that after his written offer in his email of September 18, 2001, he never heard back from Mr. LeFlur or anyone else at Northrim. Mr. Kirschner affirms that there is no written assignment in any form between City Bank and Northrim.

Mr. Kirschner's declarations also show that City Bank did not receive any funds from Northrim for the purpose of paying off City Bank's loans to the Sarps or Katmai Lodge, Inc.

Legal Analysis

The issue here is whether Northrim ever took a valid assignment of the security interest of City Bank such that it could rely on City Bank's December 30, 1994 financing statement. Northrim relies entirely on the September 18, 2001 email from Mr. Kirschner to Mr. LeFlur and the UCC-3 Amendment filed on June 23, 2003. Northrim argues that these documents prove that City Bank intended to assign its security interest to Northrim and that no further documentation is legally required. *See* Northrim Bank's Supplemental Brief Supporting Amended Motion for Relief From Automatic Stay, at p. 4. I disagree.

The Uniform Commercial Code, as adopted in Washington, does not contain any provisions specific to the assignment issue here. Under contract law, I must find an agreement of the parties that City Bank assign its security interest to Northrim. On the evidence, I find only an offer by City Bank (via the September 18, 2001 email) to assign its security interest and no timely acceptance by Northrim. The UCC-3 amendment that was filed on June 23, 2003, assuming it was filed by Northrim, does not constitute an acceptance of that offer. First, the amendment was filed a year and a half after the email was sent. Second, there is no evidence that City Bank had any notice of the filing of the UCC-3 amendment. Accordingly, I find no meeting of the minds between the parties.

In addition, there is no evidence that Northrim's loans were made for the purpose of paying off City Bank's loans to Sarp/Katmai. In fact, none of Northrim loan documents, which are attached to Northrim's proof of claim filed in this case, even mention City Bank or the pre-existing security interest of City Bank. Therefore, Northrim cannot argue that it somehow steps into the shoes of City Bank as a result of its payment of City Bank's loans to Sarp/Katmai.

For the foregoing reasons, I conclude that Northrim may not rely on the security interest of City Bank, or upon the December 30, 1994 financing statement of City Bank, to support its claimed security interest.

The June 23, 2003 Financing Statement.

On September 22, 2003, Northrim filed a UCC-1 Financing Statement to perfect an interest in, among other things, all inventory, chattel paper, accounts, equipment and general intangibles. The Trustee's complaint filed in adversary proceeding number 05-01038 contends that this financing statement is avoidable as a preference. In Northrim's answer to the complaint, Northrim contends that its September 22, 2003 financing statement is irrelevant because it had a pre-existing security interest (presumably, that based upon City Bank's December 30, 1994 financing statement). My ruling here obviously impacts the rights of Northrim in the adversary proceeding. I make no ruling here, however, as to whether the September 22, 2003 UCC-1 filed by Northrim is avoidable.

For the foregoing reasons, I conclude that Northrim may not rely on an assignment of the secured position of City Bank. The validity of Northrim's security interest filed on September 22, 2003, will have to be determined in the adversary proceeding. Prior to a determination in that proceeding, I will not enter an order requiring the Trustee to distribute any proceeds from the sale

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of Katmai's assets to Northrim. **The Trustee may note for presentation an order consistent with my ruling here.** That order should indicate that my Letter Ruling of April 25, 2005 is withdrawn.

Very truly yours,

A handwritten signature in black ink, reading "Karen A. Overstreet". The signature is written in a cursive, flowing style.

Karen A. Overstreet
United States Bankruptcy Judge